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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/987,226	11/14/2001	Raymond Anthony Joao	RJ371	6756

7590 12/12/2007  
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YONKERS, NY 10703

EXAMINER
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NAJARIAN, LENA

ART UNIT	PAPER NUMBER
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3626

MAIL DATE	DELIVERY MODE
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12/12/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/987,226	<b>Applicant(s)</b> JOAO, RAYMOND ANTHONY	
	<b>Examiner</b> Lena Najarian	<b>Art Unit</b> 3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 September 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,9,25 and 33-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,9,25 and 33-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>20071024</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Notice to Applicant***

1. This communication is in response to the amendment filed 8/30/07 and the supplemental response filed 9/21/07. Claims 1, 9, and 25 have been amended. Claims 2-8, 10-24, and 26-32 have been canceled. Claims 33-49 are newly added. Claims 1, 9, 25, and 33-49 are pending.

***Claim Rejections – 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claim 25 is rejected under 35 U.S.C. 102(e) as being anticipated by Ballantyne et al. (5,867,821).

(A) Referring to claim 25, Ballantyne discloses a memory device for storing information regarding a restriction regarding an ability of the individual to access information contained in the patient's healthcare record, wherein the information regarding a restriction is transmitted to the receiver from the patient communication device (col. 8, lines 7-43 of Ballantyne),

wherein the processor processes the request utilizing the information regarding a restriction and determines whether accessing of the information contained in the patient's healthcare record is authorized (col. 8, lines 2-60 of Ballantyne).

Insofar as the claim recites "at least one of," or "or," it is immaterial whether or not the other elements are also disclosed.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 9, and 33-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ballantyne et al. (5,867,821) in view of Knaus et al. (US 2002/0004727 A1).

(A) Referring to claim 1, Ballantyne discloses an apparatus, comprising (abstract of Ballantyne):

a processor, wherein the processor processes a request to access information contained in a patient's healthcare record, wherein the processor determines whether an individual is authorized to access information contained in the patient's healthcare record, and further wherein the processor generates a

notification report containing information regarding identification information regarding the individual (col. 7, line 67 – col. 8, line 60, col. 15, lines 22-39, col. 16, lines 7-13, and col. 12, lines 35-57 of Ballantyne); and

a transmitter, wherein the transmitter transmits the notification report to a patient communication device via a communication network (col. 7, line 67 – col. 8, line 60, col. 15, lines 22-39, col. 16, lines 7-13, and col. 12, lines 35-57 of Ballantyne).

Ballantyne does not expressly disclose further wherein the notification report is transmitted to the patient communicative device at least one of during, concurrently with, at a same time as, and prior to a completion of, an at least one of an accessing, an obtaining, a changing, an altering, and a modifying, of information contained in the patient's healthcare record or the patient's healthcare file by the individual or user, or at least one of during, concurrently with, at the same time as, and prior to a completion of, a processing of the request.

Knaus discloses further wherein the notification report is transmitted to the patient communicative device of the patient prior to a completion of an obtaining of information contained in the patient's healthcare record by the individual (para. 58 of Knaus).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned features of Knaus within Ballantyne. The motivation for doing so would have been to provide a secure

access to a patient's own medical record only by said patient and those users designated and authorized by said patient (para. 21 of Knaus).

Insofar as the claim recites "at least one of" or "or," it is immaterial whether or not the other elements are also disclosed.

(B) Referring to claim 9, Ballantyne discloses an apparatus, comprising (abstract of Ballantyne):

a receiver for receiving information regarding a restriction regarding an ability of an individual to access information contained in a patient's healthcare record of a patient, wherein the information regarding a restriction is transmitted from a patient communication device, and further wherein the information regarding a restriction is transmitted to the receiver via a wireless communication network (col. 2, lines 18-20, col. 8, lines 7-43, and col. 7, line 67 – col. 8, line 2 of Ballantyne);

a memory device for storing the information regarding a restriction (col. 8, lines 7-43 of Ballantyne); and

a processor for processing a request to access information contained in the patient's healthcare record, wherein the processor processes the request utilizing the information regarding a restriction, and further wherein the processor determines whether an accessing of the information contained in the healthcare record is authorized, based on the information regarding a restriction (col. 8, lines 2-60 of Ballantyne).

Ballantyne does not expressly disclose that the information regarding a restriction or limitation is entered by the patient into a patient communication device.

Knaus discloses that the information regarding a restriction or limitation is entered by the patient into a patient communication device (para. 21 and para. 43 of Knaus).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned features of Knaus within Ballantyne. The motivation for doing so would have been to provide a secure access to a patient's own medical record only by said patient and those users designated and authorized by said patient (para. 21 of Knaus).

Insofar as the claim recites "at least one of," or "or," it is immaterial whether or not the other elements are also disclosed.

(C) Referring to claim 33, Ballantyne discloses wherein the notification report is transmitted to the patient communication device via a wireless communication network (col. 7, line 67 – col. 8, line 60, col. 15, lines 22-39, and col. 12, lines 35-57 of Ballantyne).

Insofar as the claim recites "at least one of," or "or," it is immaterial whether or not the other elements are also disclosed.

(D) Referring to claim 34, Ballantyne discloses wherein the apparatus transmits the notification report to a communication device associated with a healthcare provider associated with the patient (col. 8, lines 20-28 of Ballantyne).

Insofar as the claim recites "at least one of," or "or," it is immaterial whether or not the other elements are also disclosed.

(E) Referring to claim 35, Ballantyne discloses wherein the request to access information contained in a patient's healthcare record is made by the healthcare provider associated with the patient to update a record (col. 10, lines 10-27 of Ballantyne).

Insofar as the claim recites "at least one of," or "or," it is immaterial whether or not the other elements are also disclosed.

(F) Referring to claim 36, Ballantyne does not expressly disclose wherein the request to at least one of access, obtain, change, alter, and modify, information contained in a patient's healthcare record or a patient's healthcare file, is made by a healthcare payer or a healthcare insurance provider to process an insurance claim or to obtain information regarding the patient.

Knaus discloses wherein the request to obtain information contained in a patient's healthcare record is made by a healthcare insurance provider to process an insurance claim (para. 62 of Knaus).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned features of Knaus within Ballantyne. The motivation for doing so would have been for the data to be used as a primary resource for payors (para. 62 of Knaus).

Insofar as the claim recites "at least one of," or "or," it is immaterial whether or not the other elements are also disclosed.



(G) Referring to claim 37, Ballantyne does not expressly disclose wherein the request to access information contained in a patient's healthcare record is made by the patient to provide information to a healthcare provider.

Knaus discloses wherein the request to access information contained in a patient's healthcare record is made by the patient to provide information to a healthcare provider (para. 43 of Knaus).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned features of Knaus within Ballantyne. The motivation for doing so would have been for the information to be accessed only by those with appropriate authority as authorized by the patient (para. 43 of Knaus).

Insofar as the claim recites "at least one of," or "or," it is immaterial whether or not the other elements are also disclosed.

(H) Referring to claim 38, Ballantyne discloses wherein the processor processes information for allowing and effectuating an accessing of, an obtaining of, a changing of, an alteration of, and updating of, and a modification of, information contained in the patient's healthcare record, by the individual (col. 7, line 66 – col. 8, line 39, col. 3, lines 42-46, and col. 10, lines 10-27 of Ballantyne).

(I) Referring to claim 39, Ballantyne does not expressly disclose wherein the apparatus generates a second notification report containing information regarding an attempt to obtain information contained in the patient's healthcare record, and further wherein the apparatus transmits the second notification report to the patient communication device.

Knaus discloses wherein the apparatus generates a second notification report containing information regarding an attempt to obtain information contained in the patient's healthcare record, and further wherein the apparatus transmits the second notification report to the patient communication device (para. 58 of Knaus; the Examiner interprets a "request for authorization" to be a form of "attempt to obtain").

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned features of Knaus within Ballantyne. The motivation for doing so would have been for the patient to be informed of requests and respond accordingly (para. 58 of Knaus).

Insofar as the claim recites "at least one of," or "or," it is immaterial whether or not the other elements are also disclosed.

(J) Referring to claim 40, Ballantyne does not expressly disclose wherein the apparatus receives a response to the notification report, wherein the response to the notification report is transmitted from the patient communication device, and further wherein the response to the notification report contains information for terminating or denying an obtaining of information contained in the patient's healthcare record, and further wherein the apparatus terminates or denies the request.

Knaus discloses wherein the apparatus receives a response to the notification report, wherein the response to the notification report is transmitted from the patient communication device, and further wherein the response to the notification report contains information for terminating or denying an obtaining of

information contained in the patient's healthcare record, and further wherein the apparatus terminates or denies the request (para. 43 and para. 58 of Knaus).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned features of Knaus within Ballantyne. The motivation for doing so would have been for patients to have control over their medical records (para. 21 of Knaus).

Insofar as the claim recites "at least one of," or "or," it is immaterial whether or not the other elements are also disclosed.

(K) Referring to claim 41, Ballantyne discloses wherein the apparatus stores information regarding changing of any information contained in the patient's healthcare record, wherein the information regarding any changing of any information contained in the patient's healthcare record includes any change regarding the patient's healthcare record (col. 13, lines 29-41 of Ballantyne).

Insofar as the claim recites "at least one of," or "or," it is immaterial whether or not the other elements are also disclosed.

(L) Referring to claim 42, Ballantyne discloses wherein the apparatus generates an activity report containing information regarding accessing information contained in the patient's healthcare record, wherein the activity report is automatically generated by the apparatus monthly, and further wherein the apparatus transmits the activity report to the patient communication device (col. 8, lines 2-9 & 52-60 of Ballantyne).

Ballantyne does not expressly disclose that the patient communication device is the patient's.

Knaus discloses that the patient communication device is the patient's (para. 21 of Knaus).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned features of Knaus within Ballantyne. The motivation for doing so would have been for patients to have control over their medical records (para. 21 of Knaus).

Insofar as the claim recites "at least one of," or "or," it is immaterial whether or not the other elements are also disclosed.

(M) Referring to claim 43, Ballantyne discloses wherein the apparatus generates an activity report containing information regarding accessing of the information contained in the patient's healthcare record during a pre-specified time period (col. 8, lines 2-9 & 52-60 of Ballantyne).

Insofar as the claim recites "at least one of," or "or," it is immaterial whether or not the other elements are also disclosed.

(N) Referring to claim 44, Ballantyne discloses wherein the activity report is automatically generated by the apparatus and automatically transmitted by the apparatus to the patient communication device monthly (col. 8, lines 2-60 of Ballantyne).

Ballantyne does not expressly disclose that the patient communication device is the patient's.

Knaus discloses that the patient communication device is the patient's (para. 21 of Knaus).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned features of Knaus within Ballantyne. The motivation for doing so would have been for patients to have control over their medical records (para. 21 of Knaus).

Insofar as the claim recites "at least one of," or "or," it is immaterial whether or not the other elements are also disclosed.

(O) Referring to claim 45, Ballantyne discloses wherein the information regarding a restriction involves restricting accessing to a section of the patient's healthcare record (col. 8, lines 47-50 of Ballantyne).

(P) Referring to claim 46, Ballantyne discloses wherein the information regarding a limitation involves limiting access to a section of the patient's healthcare record for a designated purpose, wherein the designated purpose involves performing a diagnosis (col. 8, lines 43-54 and coll. 11, lines 24-27 of Ballantyne).

(Q) Referring to claim 47, Ballantyne does not expressly disclose wherein the processor generates a notification report containing information regarding the request, and further wherein the apparatus transmits the notification report to the patient communication device of the patient prior to a completion of an obtaining of information contained in the patient's healthcare record by the individual.

Knaus discloses wherein the processor generates a notification report containing information regarding the request, and further wherein the apparatus transmits the notification report to the patient communication device of the patient prior to a completion of an obtaining of information contained in the patient's healthcare record by the individual (para. 58 of Knaus).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned features of Knaus within Ballantyne. The motivation for doing so would have been for patients to have control over their medical records (para. 21 of Knaus).

Insofar as the claim recites "at least one of," or "or," it is immaterial whether or not the other elements are also disclosed.

(R) Referring to claim 48, Ballantyne discloses an apparatus, comprising (abstract of Ballantyne):

a processor, wherein the processor processes a request to access information contained in a patient's healthcare record, wherein the processor determines whether an individual is authorized to access information contained in the patient's healthcare record, and further wherein the processor generates a notification report containing information regarding the request, wherein the information regarding the request contains information regarding the individual making the request (col. 7, line 67 – col. 8, line 60, col. 15, lines 22-39, col. 16, lines 7-13, and col. 12, lines 35-57 of Ballantyne); and

a transmitter, wherein the transmitter electronically transmits the notification report to a patient communication device via a wireless communication network (col. 7, line 67 – col. 8, line 60, col. 15, lines 22-39, col. 16, lines 7-13, and col. 12, lines 35-57 of Ballantyne).

Ballantyne does not expressly disclose further wherein the notification report is transmitted to the patient communicative device at least one of during, concurrently with, at a same time as, and prior to a completion of, an at least one

of an accessing, an obtaining, a changing, an altering, and a modifying, of information contained in the patient's healthcare record or the patient's healthcare file by the individual or user, or at least one of during, concurrently with, at the same time as, and prior to a completion of, a processing of the request.

Knaus discloses further wherein the notification report is transmitted to the patient communicative device of the patient prior to a completion of an obtaining of information contained in the patient's healthcare record by the individual (para. 58 of Knaus).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned features of Knaus within Ballantyne. The motivation for doing so would have been to provide a secure access to a patient's own medical record only by said patient and those users designated and authorized by said patient (para. 21 of Knaus).

Insofar as the claim recites "at least one of" or "or," it is immaterial whether or not the other elements are also disclosed.

(S) Referring to claim 49, Ballantyne does not expressly disclose wherein the apparatus receives a response to the notification report, wherein the response to the notification report is transmitted from the patient communication device, and further wherein the response to the notification report contains information for terminating or denying an obtaining of information contained in the patient's healthcare record, and further wherein the apparatus terminates or denies an obtaining of information contained in the patient's healthcare record.

Knaus discloses wherein the apparatus receives a response to the notification report, wherein the response to the notification report is transmitted from the patient communication device, and further wherein the response to the notification report contains information for terminating or denying an obtaining of information contained in the patient's healthcare record, and further wherein the apparatus terminates or denies an obtaining of information contained in the patient's healthcare record (para. 43 and para. 58 of Knaus).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned features of Knaus within Ballantyne. The motivation for doing so would have been for patients to have control over their medical records (para. 21 of Knaus).

Insofar as the claim recites "at least one of," or "or," it is immaterial whether or not the other elements are also disclosed.

### ***Response to Arguments***

6. Applicant's arguments with respect to claims 1 and 9 have been considered but are moot in view of the new ground(s) of rejection.

7. Applicant's arguments filed 8/30/07 have been fully considered but they are not persuasive. Applicant's arguments will be addressed hereinbelow in the order in which they appear in the response filed 8/30/07.

(1) Applicant states that the present invention, as defined by the claims, is patentable over the prior art. Applicant respectfully submits that Ballantyne and Mayaud do not disclose, teach, or suggest the recited features of the claims.



(A) As per the first argument, the Examiner is concerned that, aside from merely alleging that certain claimed features are not obvious from Ballantyne and Mayaud, essentially in the form of blanket statements, Applicant does not point to any specific distinction(s) between the features disclosed in the reference and the features that are presently claimed. In particular, 37 CFR 1.111(b) states, "A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the reference does not comply with the requirements of this section." Applicant has failed to specifically point out HOW the language of the claims patentably distinguishes them from the applied reference. Also, arguments or conclusions of Attorney cannot take the place of evidence. *In re Cole*, 51 CCPA 919, 326 F.2d 769, 140 USPQ 230 (1964); *In re Schulze*, 52 CCPA 1422, 346 F.2d 600, 145 USPQ 716 (1965); *Mertizner v. Mindick*, 549 F.2d 775, 193 USPQ 17 (CCPA 1977).

### **Conclusion**

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited but not applied prior art teaches a method and system for managing patient medical records (US 2001/0041991 A1); an electronic medical record information management system and method thereof (US 2001/0049610 A1); a method and system for processing electronic

documents (6,021,202); and a system and method for automated creation of patient controlled records (US 2002/0026332 A1).

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lena Najarian whose telephone number is 571-272-7072. The examiner can normally be reached on Monday - Friday, 9:30 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on 571-272-6776. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*Ln*

In

11-27-07

*Robert Morgan*  
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